

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

RITA MENDEZ,	:	
Plaintiff	:	CIVIL ACTION NO. 3:18-2165
v.	:	(MANNION, D.J.)
		(MEHALCHICK, M.J.)
WEIS SUPERMARKET,	:	
Defendant	:	

ORDER

Pending before the court is the report of Magistrate Judge Karoline Mehalchick which recommends that the plaintiff's complaint be dismissed without prejudice to allowing the plaintiff to file an amended complaint. (Doc. 12). With the time for doing so having passed, the plaintiff has not filed objections to the report.

When no objections are filed to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

Judge Mehalchick gave the plaintiff's complaint preliminary consideration pursuant to 28 U.S.C. §1915(e)(2). In doing so, she determined that the plaintiff has failed to properly plead the requirements of diversity jurisdiction, the foundation of the plaintiff's complaint. To this extent, Judge Mehalchick observed that both the plaintiff and defendant are citizens of Pennsylvania, and that the plaintiff has only alleged damages in the amount of \$30,000 for her alleged injuries.

Moreover, considering the allegations of the plaintiff's complaint and construing the plaintiff's *pro se* complaint liberally, even to the extent that the plaintiff is attempting base her claims on federal question jurisdiction, Judge Mehalchick determined that the plaintiff has failed to properly allege claims pursuant to 42 U.S.C. §§1981 and 1983. Under §1981, Judge Mehalchick found that the plaintiff has failed to allege any intent to discriminate, or anything more than what she perceived as a generalized bias towards her. Under §1983, Judge Mehalchick found that the plaintiff had failed to allege any action taken under color of state law.

In light of the foregoing, Judge Mehalchick recommends that the plaintiff's complaint be dismissed. However, she recommends that dismissal be without prejudice in order to allow the plaintiff to cure the deficiencies of her complaint. The undersigned has reviewed both the plaintiff's complaint and Judge Mehalchick's report and finds no clear error of record. The report

and recommendation with therefore be adopted in its entirety.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- (1) The report and recommendation of Judge Mehalchick, (Doc. 12), is **ADOPTED IN ITS ENTIRETY**.
- (2) The plaintiff is to file an amended complaint which meets the specifications set forth in Judge Mehalchick's report on or before **April 1, 2019**.
- (3) The instant action is **REMANDED** to Judge Mehalchick for all further pre-trial proceedings.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Date: March 21, 2019

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